

JUDGE MARRERO

11 CV 0245

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FERNANDO TELLEZ,

Plaintiff,

-against-

FREDERICK J. HANNA & ASSOCIATES, P.C.

Defendant(s).
-----X

Civil Action No.:

JAN 13 2011

U.S.D.C. S.D. N.Y.

COMPLAINT

COMPLETED

DEMAND FOR JURY TRIAL

Plaintiff FERNANDO TELLEZ ("Plaintiff"), by and through his attorneys, M. Harvey Rephen & Associates, P.C., as and for its Complaint against the Defendant FREDERICK J. HANNA & ASSOCIATES, P.C. hereinafter referred to as Defendant(s)", respectfully sets forth, complains and alleges, upon information and belief, the following:

INTRODUCTION/PRELIMINARY STATEMENT

1. Plaintiff brings this action on his own behalf for damages and declaratory and injunctive relief arising from the Defendant's violation(s) of §1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA").

PARTIES

2. Plaintiff is a resident of the State of New York, residing at 156 E. 79th St, New York, NY 10075.

3. Defendant FREDERICK J. HANNA & ASSOCIATES, P.C. is a professional corporation with an office at 1427 Roswell Road, Marietta, GA 30062.

4. The Defendant is a "debt collector" as the phrase is defined and used in the FDCPA under 15 USC §1692a (6).

JURISDICTION AND VENUE

5. The Court has jurisdiction over this matter pursuant to 28 USC §1331, as well as 15 USC §1692 et seq. and 28 U.S.C. §2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. §1367(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

FACTUAL ALLEGATIONS

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "7" herein with the same force and effect as if the same were set forth at length herein.

8. On information and belief, Defendant, on behalf of a third-party, began collecting an alleged consumer debt from the Plaintiff.

9. On information and belief, and better known to the Defendant, the Defendant began its collection efforts and campaign of communicating with the Plaintiff by calling the Plaintiff and both speaking to him and leaving messages on his phone approximately in October 2010.

10. The Plaintiff informed the Defendant that he was represented by Attorney M. Harvey Rephen at that time and provided his contact number – 212.796.0930.

11. The Defendant, despite having been informed that the Plaintiff was represented by legal counsel continued to call the Plaintiff repeatedly up till the time of the initial draft complaint (Dec.8th, 2010) and left several messages on his phone (recorded and saved).

12. The Defendant then called the Plaintiff's Attorney M. Harvey Rephen on December 8th, 2010 and admitted that the Plaintiff had given them Attorney Rephen's

phone number.

13. The Defendant by continuing to call the Plaintiff after having been informed of Attorney Rephen representation of the Plaintiff violated 15 USC §1692c(a)(2) which prohibited the Defendant from communicating with the Plaintiff once the debt collector knows of the consumers representation by an attorney and can readily ascertain his name and address.

14. The Defendant further violated 15 USC §1692e (11) by failing to informed the Plaintiff that the defendant was a debt collector in several of the phone calls to the Plaintiff.

FIRST CAUSE OF ACTION
(Violations of the FDCPA)

15. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "14" herein with the same force and effect as if the same were set forth at length herein.

16. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 USC §1692c (a) (2), and 15 USC §1692e (11).

17. As a result of Defendant's violations of the FDCPA, Plaintiff and the Class have been damaged and are entitled to damages in accordance with the FDCPA.

DEMAND FOR TRIAL BY JURY

18. Plaintiff Fernando Tellez hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Fernando Tellez demands judgment from the Defendants FREDERICK J. HANNA & ASSOCIATES, P.C. as follows:

- A. For actual damages provided and pursuant to 15 USC §1692k (a) (1);
- B. For statutory damages provided and pursuant to 15 USC §1692k (2)

(A);

- C. For statutory damages provided and pursuant to 15 USC §1692k (2)

(B);

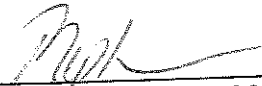
- D. For attorneys' fees and costs provided and pursuant to 15 USC §1692k (a) (3);

- E. A declaration that the Defendant's practices violated the FDCPA;

- F. For any such other and further relief, as well as further costs, expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York
January 10, 2011

Respectfully submitted,

By: 
M. Harvey Rephen, (MR3384), Esq.
M. HARVEY REPHEN & ASSOCIATES, P.C.
708 Third Avenue, 6th Floor
New York, New York 10017
Phone: (212) 796-0930
Facsimile: (212) 330-7582

Attorney for the Plaintiff Fernando Tellez

To: Frederick J. Hanna & Associates, P.C.
1427 Roswell Rd.
Marietta, GA 30061

(Via Prescribed Service)

Clerk,
United States District Court, Southern of New York
(For Filing Purposes)

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